IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.846 OF 2004

Smt.Rajkishori Kiran Shukla. ...Petitioner.
Vs.
Ramesh Chandrika Prasad Pathak. ...Respondents.
....
Mr. Girish Desai for the Petitioner.
Mr. S. G. Karandikar for the Respondent
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 10, 2005.

P.C.:

A Division Bench of this Court has held in **Laxmi Investment Co. Pvt. Ltd. vs. Tarachand Harbilas,** AIR 1968 Bom.250 that where a suit is dismissed for default and an application for its restoration under Order 9 Rule 9 of the the Code of Civil Procedure, 1908, is also dismissed for default, a further application to restore the application under Order 9 Rule 9 to file can be considered under the inherent powers of the Court declared under Section 151 of the Code. This position is settled. However, the issue which arises in the present proceedings is

whether this Court in the exercise of its supervisory jurisdiction under Article 227 of the Constitution should interfere in the facts of this case.

2. The Petitioner filed Regular Civil Suit No.87 of 1990 on 31st July 1990 before the Civil Judge, Junior Division, Palghar for declaratory relief claiming to be a tenant in respect of the suit premises. An ad-interim injunction was granted by the Trial Court and the case of the Respondent is that on the strength of the ad-interim order, the Respondent came to be forcibly dispossessed. The Respondent filed a suit under Section 6 of the Specific Relief Act, 1963, on 25th January 1991 which came to be partly decreed on 17th December 1998. A Civil Revision Application against the aforesaid decree has been admitted and is pending before this Court. The declaratory suit filed by the Petitioner was dismissed for default on 19th September 1996. A General Power of Attorney was issued by the Petitioner. On 18th October 1996, an application (Misc.Application No.8 of 1996) was filed for setting aside the order of dismissal dated 19th September

1996. Miscellaneous Application No.8 of 1996 was dismissed for default on 10th April 1997. On 3rd May 1997, a fresh Miscellaneous Application (Misc. Application No.2 of 1997) was taken out for setting aside the order of dismissal in default passed on 10th April 1997 of the previous application. The second Miscellaneous Application, Miscellaneous Application No.2 of 1997, was also dismissed for default on 6th November 1998. The Petitioner thereupon took out a third Miscellaneous Application, Miscellaneous Application No.6 of 1998, for setting aside the earlier order and that in turn, was also dismissed for default on 3rd July 1998. Finally, a fourth application, Miscellaneous Application No.1 of 2001 was taken out. That application was dismissed by the Trial Court and the order of the Trial Judge has been affirmed in appeal by the Additional District Judge.

3. Both the Courts below have noted that the Medical Certificate which was produced covered only a period of two months during which the holder of the Power of Attorney was advised rest on the ground that she was suffering from high blood

pressure and diabetes. The period during which the first three applications for restoration were dismissed in default was between September 1996 and July 1998. The Courts below have noted, and in my view, quite correctly that it was difficult to digest that on every date of hearing of successive applications, the Power of Attorney would be ill. That apart, there is merit in the submission of Counsel for the Respondent that the facts of the present case establish that the Petitioner has been negligent in not attending to the proceedings with diligence. During the course of this hearing, I had asked Counsel appearing on behalf of the Petitioner as to whether there were any sufficient grounds to justify the absence of the Petitioner and/or the holder of the Power of Attorney on 10th April 1997, 5th November 1998 and 3rd July 2000 when the earlier applications were dismissed. Counsel appearing on behalf of the Petitioner fairly conceded that no medical certificate relating to those dates is forthcoming. The Court is conscious of the settled position of law that an application for restoration should be dealt with liberally in cases where there is an absence of negligence on the part of the litigating party. This is one of those exceptional

cases where the record shows a complete negligence in pursuing the litigation. In these circumstances, the exercise of the jurisdiction under Article 227 of the Constitution is not called for. The petition is accordingly rejected.

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